

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

MAR 30 1993

IN REPLY REFER TO:

Dennis P. Corbett, Esq.  
Leventhal, Senter & Lerman  
2000 K St., N.W.  
Suite 600  
Washington, D.C. 20006

92106

Re: Application of Jeffery Scott  
Bethany Beach, DE  
File No. BPH 910213 ME

Dear Mr. Corbett:

This is in response to your request for refund of the fee submitted in the above-referenced matter.

Your request is granted. We have reviewed the facts surrounding your filing and have concluded that a refund is warranted pursuant to Section 1.1111 of the Commission's rules. 47 C.F.R. § 1.1111. The subsection checked below is specifically applicable to your request.

- \_\_\_\_\_ No fee is required for the above referenced submission (§1.1111(a)(1)).
- \_\_\_\_\_ An insufficient fee has been submitted with the application/filing (§1.1111(a)(2)).
- \_\_\_\_\_ The applicant cannot fulfil the prescribed age requirement (§1.1111(a)(3)).
- \_\_\_\_\_ The Commission has adopted a new rule that has nullified the application after its acceptance for filing (§1.1111(a)(4)).
- \_\_\_\_\_ A new law or treaty has rendered useless a grant or other positive disposition of the application (§1.1111(a)(4)).
- \_\_\_\_\_ The application was not timely filed in accordance with the filing window as established by the Commission (§1.1111(6)).
- \_\_\_\_\_ In the case of a broadcast applicant, the application was granted without being designated for hearing (§1.1111(b)(1)).
- \_\_\_\_\_ In the case of a broadcast applicant, the application was dismissed prior to designation for hearing or in the order

designating the case for hearing (§1.1111(b)(2)).

- In the case of a broadcast applicant, the application was dismissed for failure to file a Notice of Appearance (§1.1111(b)(2)).
- In the case of a broadcast applicant, the applicant was the only applicant in the proceeding to file a Notice of Appearance and the application was immediately grantable (§1.1111(b)(3)).
- In the case of a broadcast applicant, the applicant was the only applicant in the proceeding who filed a Notice of Appearance and the application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)(3)).
- In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for the dismissal of all but one application, and that application was immediately grantable (§1.1111(b)(4)).
- X In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for dismissal of all but one application and that application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)(4)).

A check, made payable to maker of the original check and drawn in the amount of \$6,760.00, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

*Marilyn J. O'Brien*

DC-9

9/167178/10291004

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

RECEIVED

FEB 12 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re the Applications of	)	MM Docket No. 92-106
	)	
JEFFERY SCOTT	)	File No. BPH-910213ME
	)	
EICHER COMMUNICATIONS, INC.	)	File No. BPH-910213MF

For Construction Permit for  
New FM Station on Channel 278A  
at Bethany Beach, Delaware

To: The Managing Director

**REQUEST FOR FEE REFUND**

Jeffery Scott ("Scott") pursuant to Section 1.1111(c)(4) of the Communication's Rules, hereby requests a refund of his hearing designation fee paid in the above-captioned proceeding.

1. On July 15, 1991, Scott filed his Hearing Fee in the above-captioned case, together with a check make payable to the Commission in the amount of \$6,760, the hearing designation fee specified in Section 1.1104 of the Commission's Rules, 47 C.F.R. § 1.1104. Scott has attached a copy of his hearing fee transmittal as Appendix 1 to this Request.

2. By Hearing Designation Order, released May 14, 1992, the Commission designated the Scott application for

comparative hearing. See Jeffery Scott, 7 FCC Rcd 3041 (M. Med. Bur. 1992).

3. On June 3, 1992, Scott joined in the filing of a timely "Joint Request for Approval of Settlement Agreement," which contemplated the approval of an agreement whereby competing applicant Eicher Communications, Inc. ("Eicher") would dismiss its application in consideration of a settlement payment. The Joint Request was filed within the deadline for settlements for which the Commission will refund hearing fees. 47 C.F.R. § 1.1111(c)(4). See also, Report and Order on Reform of Comparative Hearing Process, 6 FCC Rcd 157, 158 (¶ 7) (1990).


4. By Memorandum Opinion and Order, FCC 92M-831, released July 31, 1992, a copy of which is contained in Appendix 2 hereto, the Presiding Administrative Law Judge granted the Joint Request, approved the Settlement Agreement between Eicher and Scott, dismissed Eicher's application, granted the Scott application and terminated MM Docket No. 92-106.

5. Scott's Request complies in all respects with the fee refund provision of 47 C.F.R. § 1.1111(c)(4). Report and Order on Reform of Hearing Process, supra. A similar request by Eicher has already been granted. Accordingly, the Managing Director should refund Scott's hearing fee.

WHEREFORE, in light of the foregoing, Scott respectfully requests that the Managing Director refund \$6,670 to Scott.

Respectfully submitted,

JEFFERY SCOTT

By:   
Dennis P. Corbett

Leventhal, Senter & Lerman ;  
2000 K Street, N.W.  
Suite 600  
Washington, DC 20006-1809  
(202) 429-8970

February 12, 1993

His Attorney

APPENDIX 1

1  
FBI  
11-18-68  
LAW OFFICES  
LEVENTHAL, SENTER & LERMAN  
SUITE 600  
2000 K STREET, N.W.

NORMAN P. LEVENTHAL

TELEPHONE

JEFFERY SCOTT  
12 THE NARROWS 302-537-0466  
FENWICK ISLAND, DE 19975

990

62-31 ★  
311

*Payable to*



**Sussex Trust**

Bethany Beach, Delaware 19930

⑆03⑆⑆003⑆9⑆0990 ⑆0320⑆780⑆



Approved by OMB  
3060-0440  
Expires 12/31/90

FEDERAL COMMUNICATIONS COMMISSION  
**FEE PROCESSING FORM**

FOR  
FCC  
USE  
ONLY

Please read instructions on back of this form before completing it. Section I MUST be completed. If you are applying for concurrent actions which require you to list more than one Fee Type Code, you must also complete Section II. This form must accompany all payments. Only one Fee Processing Form may be submitted per application or filing. Please type or print legibly. All required blocks must be completed or application/filing will be returned without action.

**SECTION I**

APPLICANT NAME (Last, first, middle initial)

Jeffery Scott

MAILING ADDRESS (Line 1) (Maximum 35 characters - refer to Instruction (2) on reverse of form)

c/o Leventhal, Senter & Lerman

MAILING ADDRESS (Line 2) (If required) (Maximum 35 characters)

2000 K Street, N.W., Suite 600

CITY

Washington

STATE OR COUNTRY (If foreign address)

D.C.

ZIP CODE

20006-1809

CALL SIGN OR OTHER FCC IDENTIFIER (if applicable)

910213ME

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in FCC Fee Filing Guides. Enter in Column (B) the Fee Multiple, if applicable. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number entered in Column (B), if any.

(A)	(B)	(C)								
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M	W	R								

**SECTION II** — To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.

(A)	(B)	(C)								
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ADD ALL AMOUNTS SHOWN IN COLUMN C, LINES (1) THROUGH (5), AND ENTER THE TOTAL HERE. THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE.										
			<table><tr><td>TOTAL AMOUNT REMITTED WITH THIS APPLICATION OR FILING</td></tr><tr><td>\$6,760.00</td></tr></table>	TOTAL AMOUNT REMITTED WITH THIS APPLICATION OR FILING	\$6,760.00	<table><tr><td>FOR FCC USE ONLY</td></tr><tr><td></td></tr></table>	FOR FCC USE ONLY			
TOTAL AMOUNT REMITTED WITH THIS APPLICATION OR FILING										
\$6,760.00										
FOR FCC USE ONLY										

**APPENDIX 2**

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

FCC 92M-831  
03740

In re Applications of	)	MM DOCKET NO. 92-106
	)	
JEFFREY SCOTT	)	File No. BPH-910213ME
	)	
EICHER COMMUNICATIONS, INC.	)	File No. BPH-910213MF
	)	
For Construction Permit for a	)	
New FM Station on Channel 278A	)	
in Bethany Beach, Delaware	)	

MEMORANDUM OPINION AND ORDER

Issued: July 29, 1992;

Released: July 31, 1992

Background

1. This is a ruling on a Joint Request For Approval Of Settlement Agreement that was filed on June 3, 1992, by Eicher Communications, Inc. ("Eicher") and Jeffrey Scott ("Scott"), and on a related Petition For Leave To Amend that was filed by Scott on June 3, 1992. Also considered are a Supplement To Joint Request For Approval Of Settlement Agreement filed by Eicher on June 16, 1992, and Mass Media Bureau ("Bureau") Comments In Support Of Joint Request For Approval Of Settlement Agreement filed on June 18, 1992.

Facts

2. Eicher and Scott are the only two exclusive applicants for a construction permit for a new FM Station on Channel 278 at Bethany Beach, Delaware. See Hearing Designation Order DA 92-559, released May 14, 1992, reported at Jeffrey Scott, et al., 7 F.C.C. Rcd 3041 (MM Bur. 1992).

3. The Settlement contemplates that Eicher's application will be voluntarily dismissed with prejudice in return for a payment of a sum of money that is not to exceed \$18,000, representing its legitimate and prudent expenses. In addition, the parties have entered into a Consulting Agreement pursuant to which Scott will pay Eicher \$17,000 to provide broadcast station financial planning and management services to Scott for a period of one year. Scott contemplates withdrawing his integration and diversification commitments and Scott would receive the grant.

4. The proposed Amendment addresses an issue set in the Hearing Designation Order, supra at Paras. 5 and 9 on how Scott "propose[s] to resolve any RF exposure to workers" on his proposed tower. Scott was permitted to amend his tower site to cure a short-spacing. See Hearing Designation Order, supra at Paras. 2-3. Scott proposes to construct a new tower and commits to shut down station operations as necessary in order to protect workers. On July 28, 1992, the Assistant Chief, Audio Services Division, advised the Presiding Judge in writing:

Upon examination of the enclosed pleading [Petition For Leave To Amend], the Bureau finds that the information satisfies the requirements of 47 C.F.R. §1.1311.

Accordingly, the Bureau requests that the contingent environmental issue specified as to this applicant be eliminated from the Hearing Designation Order.

See ltr. dtd. July 28, 1992 from Assistant Chief Jan Gay to the Presiding Judge. Based on the unqualified statement of the Bureau quoted above and the representations of Scott in its Petition For Leave To Amend, the environmental issue against Scott is considered as deleted from the designation order.

5. Eicher has set forth in its Supplement an itemization which sufficiently demonstrates to the Presiding Judge that its legitimate and prudent expenses incurred in this proceeding are in excess of \$18,000. Also, it is noted that Eicher is a certified public accountant. The Consulting Agreement reflects that Eicher will be performing services for which he is qualified for the limited period of only one year in return for \$17,000. This appears to be a bona fide and reasonable arrangement for services. The Bureau concurs with that conclusion, citing Texas Television, Inc., 91 F.C.C. 2d 1043 (Review Bd 1982).

6. In his Petition For Leave To Amend, Scott also asks that he be permitted to withdraw his integration proposal and his proposal to classify his interest in Great South Broadcasting as nonattributable. This is a universal settlement and the agreement was filed by the deadline for filing a Notice of Appearance. Therefore, Scott readily meets the Commission standard for withdrawing integration/diversification commitments incident to a timely filed universal settlement. See Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, 6 F.C.C. Rcd 157 (1990), recon. granted in part, 6 F.C.C. Rcd 3403 (1991) at Para. 6 (on reconsideration Commission extends deadline for filing withdrawal of integration and diversification proposals to exhibit exchange date). The Bureau concurs that Scott's withdrawal of his integration and divestiture commitments are timely and should be accepted. See Bureau Comments at 3. The Presiding Judge will permit Scott to withdraw his proposals.

#### Settlement

7. The statutory standard to be applied in accepting or rejecting a settlement proposal provides:

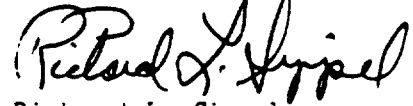
The Commission shall approve the agreement only if it determines that (a) the agreement is consistent with the public interest, convenience or necessity, and (b) no party to the agreement filed its application for the purpose of reaching or carrying out such agreement.

Communications Act of 1934, as amended, §311(c)(3). See Oak Television of Everett, Inc., et al., 93 F.C.C. 2d 926, 52 Radio Reg. 2d (P&F) 995 (Review Bd. 1983).

8. In this case, the Joint Petition was filed timely in accordance

IT IS FURTHER ORDERED that the proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

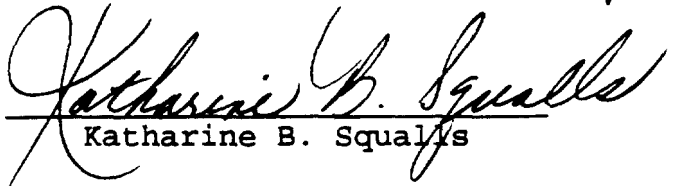
A handwritten signature in cursive script, appearing to read "Richard L. Sippel".

Richard L. Sippel  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I, Katharine B. Squalls, do hereby certify that a copy of the foregoing "Request for Fee Refund" was mailed, United States first-class mail, postage prepaid, this 12th day of February, 1993 to the following:

\*Mr. Andrew Fishel  
Managing Director  
Federal Communications Commission  
Office of the Managing Director  
1919 M Street, N.W.  
Room 852  
Washington, D.C. 20554

  
Katharine B. Squalls

\*By Hand Delivery